

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

ROSBEL GARZA §
§
VS. § CIVIL ACTION NO. _____
§
M.G. DYESS, INC., CATERPILLAR, §
INC., WILLBROS USA, INC., §
WILLBROS CONSTRUCTION (U.S.)- §
LLC-DELAWARE, CENTERPOINT §
ENERGY GAS TRANSMISSION §
COMPANY, INC., SPECTRA ENERGY §
CORP., SPECTRA ENERGY PARTNERS, §
LP, SOUTHEAST SUPPLY §
HEADER, L.L.C. §

DEFENDANTS' NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Defendants Caterpillar, Inc., M.G. Dyess, Inc., and Willbros Construction (U.S.), LLC f/k/a Willbros RPI, Inc. (erroneously named 'Willbros Construction (U.S.), LLC.- Delaware'), and file this their Notice of Removal, and would show the Court as follows:

I.

On August 29, 2008, Plaintiff Rosbel Garza, filed a suit against Defendants in the 381st District Court, Starr County, Texas, for an alleged construction accident in Mississippi. Defendants Willbros USA, Inc., Willbros Construction (U.S.), LLC f/k/a Willbros RPI, Inc. (erroneously named 'Willbros Construction (U.S.), LLC-Delaware') were served with Plaintiff's initial pleading on October 2, 2008. Defendants Caterpillar, Inc., M.G. Dyess, Inc.,

Southeast Supply Header, L.L.C., and CenterPoint Energy Gas Transmission Company, Inc., were served with Plaintiff's initial pleading on October 3, 2008. Spectra Energy Corp., Spectra Energy Partners, LP, was served on October 6, 2008.

At the time suit was filed and at the time of removal:

- a) Plaintiff Rosbel Garza is a resident alien and citizen of Mexico;
- b) Defendant Caterpillar, Inc., is a foreign corporation organized under the laws of Delaware, has its principal place of business in Illinois, and is a citizen and resident of the states of Delaware and Illinois;
- c) Defendant M.G. Dyess, Inc., is a foreign corporation organized under the laws of Mississippi, has its principal place of business in Mississippi, and is a citizen and resident of the state of Mississippi.
- d) Defendant Willbros USA, Inc., is a foreign corporation organized under the laws of Delaware, has its principal place of business in Houston, Texas, and is a citizen and resident of the states of Delaware and Texas;
- e) Defendant Willbros Construction (U.S.), LLC, is a foreign limited liability corporation organized under the laws of Delaware, has its principal place of business in Houston, Texas, and is a citizen and resident of the states of Delaware and Texas;
- f) Defendant Southeast Header Supply, L.L.C., is a foreign limited liability corporation organized under the laws of Delaware, has its principal place of

business in Houston, Texas, and is a citizen and resident of the states of Delaware and Texas;

- h) Defendant Spectra Energy Corp., is a foreign corporation organized under the laws of Delaware, has its principal place of business in Houston, Texas, and is a citizen and resident of the states of Delaware and Texas;
- i) Defendant CenterPoint Energy Gas Transmission Company, Inc., is a foreign corporation organized under the laws of Delaware, has its principal place of business in Houston, Texas, and is a citizen and resident of the states of Delaware and Texas; and
- j) Defendant Spectra Energy Partners, LP, is a foreign limited partnership organized under the laws of Delaware; one of its partners is a citizen of the state of Texas. It is a citizen and resident of the states of Delaware and Texas.

The amount and matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs. This is a civil action between citizens of different States or between citizens of a state and a subject of a foreign state.

Defendants M.G. Dyess, Inc., Willbros USA Corp., Willbros Construction (U.S.), L.L.C. f/k/a Willbros RPI, Inc. (erroneously named ‘Willbros Construction (U.S.), LLC-Delaware’), Southeast Supply Header, L.L.C., Spectra Energy Corp., Spectra Energy Partners, LP, and CenterPoint Energy Gas Transmission Company, Inc., have been fraudulently joined to this suit and may be disregarded for the purposes of determining diversity. Plaintiff has no

possibility of recovering against defendants Willbros USA, Inc., CenterPoint Energy Gas Transmission Company, Inc, Spectra Energy Corp., Spectra Energy Partners, LP, and Southeast Supply Header, L.L.C. *See Travis v. Irby*, 326 F.3d 644, 646-47 (5th Cir. 2003) (improper joinder may be established by showing the inability of the plaintiff to establish a cause of action against the non-diverse party in state court). Defendant Willbros USA, Inc., is not a party to the contract for pipeline construction at issue, nor the employer of Rosbel Garza, and is merely an affiliate with no independent liability. CenterPoint Energy Gas Transmission Company, Inc., Spectra Energy Corp., and Spectra Energy Partners, LP are not proper parties to the lawsuit, as they are not parties to the construction contract. Further, Plaintiff has not properly asserted a cause of action against Defendant Southeast Supply Header, L.L.C., and has not and cannot establish a cause of action in state court against Southeast Supply Header, L.L.C. A cause of action for negligence does not exist based on the facts alleged by Plaintiff(s) regarding the proximity or siting of a pipeline (sited and approved by the Federal Energy Regulatory Commission) to another utility.

All defendants join in and consent to this removal.

II.

Federal removal jurisdiction is appropriate because this action is one over which this Court has diversity jurisdiction under 28 U.S.C. §1332, as amended, and is one which may be removed to this Court by Defendant under 28 U.S.C. §1441.

III.

True copies of all documents required by Local Rule 81 have been filed.

IV.

Notice of this removal has been provided to the state district court where this suit originated, and notice has been provided to Plaintiff Garza.

Wherefore, premises considered, Defendants Caterpillar, Inc., M.G. Dyess, Inc., and Willbros Construction (U.S.), LLC f/k/a Willbros RPI, Inc. (erroneously named 'Willbros Construction (U.S.), LLC-Delaware'), pray that the action pending against them in the 381st District Court, Starr County, Texas, be removed therefrom to this Court and for any further relief to which Defendants are entitled.

Respectfully submitted,

WOMBLE HOWELL & CROYLE

By: /s/ W. T. Womble

W. T. Womble
State Bar No. 21881000
Federal I.D. No. 3977
Brad K. Howell
State Bar No. 24012860
Federal I.D. No. 26341
1814 Memorial Drive
Houston TX 77007

Attorneys for *Defendant, CATERPILLAR, INC.*

By: /s/ Harvey Ferguson, Jr.

Harvey Ferguson, Jr.
State Bar No. 06913500
Federal I.D. No. 8417
**GONZALES, HOBLIT & FERGUSON,
L.L.P.**
Bank of America Plaza
300 Convent Street, Ste. 1450
San Antonio TX 78205
210/224-9991; Fax: 210/226-1544

Attorneys for *Defendant*, M.G. DYESS, INC.

By: /s/ Roger W. Hughes

FERRIEL C. HAMBY, Jr.
State Bar No. 08817000
Fed. I.D. No. 1097
ROGER W. HUGHES
State Bar No. 10229500
Fed. I.D. No. 5950
ADAMS & GRAHAM, L.L.P.
P. O. Drawer 1429
Harlingen, Texas 78551-1429
956/428-7495; FAX: 956/428-2954

Attorneys for *Defendant*, WILLBROS
CONSTRUCTION (U.S.), LLC, F/K/A WILLBROS
RPI, INC. (erroneous named “Willbros
Construction (U.S.), LLC-Delaware”).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing document was forwarded on this 31st day of October 2008, to the following counsel of record and interested parties:

John M. Black *Via CM/RRR 91 7108 2133 3935 4697 2584*

HEARD, ROBINS, CLOUD & LUBEL, LLP
3800 Buffalo Speedway, 5th Floor
Houston, Texas 77098

W. T. Womble
Brad K. Howell
WOMBLE HOWELL & CROYLE
1814 Memorial Drive
Houston TX 77007

Harvey Ferguson, Jr.
GONZALES HOBLIT FERGUSON, LLP
Bank of America Plaza
300 Convent St., Suite 1450
San Antonio, Texas 78205-1318

C. Scott Kinzel
Chester Makowski
ROYSTON RAYZOR VICKERY & WILLIAMS
1001 McKinney, Suite 1100
Houston, Texas 77002

/s/ Roger W. Hughes
ROGER W. HUGHES